

- (1) The injury for which claimant currently seeks preliminary benefits was a natural and probable consequence of his original on-the-job injury of May 3, 1994. The award of preliminary benefits was, therefore, appropriate and should be affirmed.

Claimant alleges and respondent admits that claimant suffered an accidental injury arising out of and in the course of his employment on May 3, 1994. On that date he was lifting boxes when he experienced a pop in his neck and also he suffered upper, middle and low back pain. He reported the injury to his supervisor the following day and saw Dr. Pence on May 31, 1994. The record indicates that he thereafter continued to have symptoms which included difficulty walking and weakness in his legs which resulted in several falls. On September 8, 1994 claimant fell at home and his symptoms worsened.

Respondent contends the September 8, 1994 fall at home was the cause of the current need for preliminary benefits, not the original work-related accident. The Appeals Board, however, concludes from the evidence that the fall at home resulted from the weakness caused by the original injury. Claimant had long standing back problems, but the evidence indicates that the fall of May 1994 aggravated the injury. Claimant testified that on September 8, 1994 his legs gave out as he started down a set of stairs and the resulting fall created the need for the presently awarded temporary benefits. The Appeals Board finds this fall and resulting symptoms to have been a natural and probable consequence of the original injury and the award of preliminary benefits to be appropriate.

(2) The limited jurisdiction granted to the Appeals Board for review of preliminary orders does not include jurisdiction to review respondent's contention that the current award results in a windfall.

In appeals from preliminary orders the Appeals Board is limited to consideration of allegations that the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 44-551. In this case the record reflects that the claimant's current employer and a previous employer paid claimant money each week. According to the claimant, the money was intended to help him while he was off work. Respondent argues that the award of temporary total benefits under these circumstances results in an inappropriate windfall. This allegation is not one of the issues listed in K.S.A. 44-534a as a jurisdictional issue and does not otherwise amount to an allegation that the Administrative Law Judge has exceeded his jurisdiction. The Appeals Board, therefore, does not have jurisdiction to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order entered in this case on April 25, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Wichita, Kansas
Kirby A. Vernon, Wichita, Kansas
John D. Clark, Administrative Law Judge
David A. Shufelt, Acting Director